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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

| | | |
|-----------------------------|---|--|
| LEHMAN BROTHERS BANK, FSB, |) | CV 03-2702-DDP(JWJx) |
| |) | |
| Plaintiff, |) | <u>GOVERNMENT'S EX PARTE APPLICATION</u> |
| |) | <u>FOR SECOND STAY OF DISCOVERY;</u> |
| RBC MORTGAGE COMPANY OF |) | <u>DECLARATION OF JEREMY D. MATZ</u> |
| CALIFORNIA, |) | |
| |) | [[Proposed] Order Lodged |
| Intervenor, |) | Concurrently Herewith] |
| |) | |
| v. |) | |
| |) | |
| BEVERLY HILLS ESTATES |) | |
| FUNDING, INC., a California |) | |
| Corporation; et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

TO THE COURT AND ALL PARTIES OF RECORD:

Intervenor United States of America, by and through its attorneys of record, Assistant United States Attorneys Jeremy D. Matz and Michael R. Wilner, hereby applies ex parte for an order entering a second stay of discovery in this case, through and including December 31, 2009. By order entered on January 24,

1 2007, the Court granted the government's unopposed motion to
2 intervene in this action for the limited purpose of seeking a
3 stay of discovery. The Court also granted the government's
4 motion to stay discovery. At the hearing on the motion, the
5 Court stated that the stay would expire on December 28, 2008.

6 A continued stay of discovery would: (1) protect the
7 public's interest in the integrity of the ongoing criminal
8 prosecutions; (2) conserve the resources of the Court and the
9 parties; (3) not harm the civil parties' interests; and (4) avoid
10 substantial inconvenience to witnesses.

11 Before filing this ex parte application, the government
12 ascertained that the following parties do not oppose a continued
13 stay of discovery through December 31, 2009: the Receiver;
14 plaintiff Lehman Brothers Bank, FSB ("Lehman"); intervenor RBC
15 Mortgage Company of California ("RBC"); defendant Prudential
16 California Realty ("Prudential"); and defendant California Title
17 Company ("Cal Title"). On or about December 24, 2008, at the
18 government's request, counsel for the Receiver forwarded this ex
19 parte application and the accompanying proposed order to all
20 parties on the service list in this case. The government asked
21 any parties who oppose the relief sought herein to notify the
22 government of such opposition no later than January 7, 2009. By
23 the close of business on January 7, 2009, no parties had notified
24 the government of any opposition to the relief sought herein.

25 This ex parte application is based upon the attached
26 memorandum of points and authorities, the Declaration of Jeremy
27 D. Matz, all files and records of this case, and any additional
28 evidence and argument that may be presented at any hearing on


1 this ex parte application.

2 Dated: January 8, 2009

Respectfully submitted,

3 THOMAS P. O'BRIEN
4 United States Attorney

5 CHRISTINE C. EWELL
6 Assistant United States Attorney
7 Chief, Criminal Division

8 
9 JEREMY D. MATZ
10 MICHAEL R. WILNER
11 Assistant United States Attorneys
12 Major Frauds Section

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14 Attorneys for Intervenor
15 United States of America
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Lehman Brothers Bank, FSB ("Lehman") filed a civil complaint alleging that multiple entities and individuals conspired to commit fraud in connection with over \$140 million in residential real estate mortgage loans funded or acquired by Lehman. (CR 211).¹ RBC Mortgage Company of California ("RBC") intervened in the action based on allegations that the defendant entities and individuals conspired to induce RBC to fund, package, and sell tens of millions of dollars in fraudulent residential real estate mortgage loans. (CR 350). The government currently is prosecuting several criminal cases concerning many of the same transactions, entities, and individuals. Trial of remaining defendants who have not pleaded guilty is scheduled to begin on June 9, 2009. (Declaration of Jeremy D. Matz ("Matz Decl.") ¶ 2).

By order entered on January 24, 2007, the Court granted the government's motion to stay discovery in the instant case, because of the criminal cases.² However, the Court stated at the hearing on the motion that the stay would expire on December 28, 2008. The government now applies ex parte for a continued stay

¹ "CR" refers to the Clerk's Record in this case and is followed by the appropriate docket number.

² The Court's order specified that the Receiver would have the continued authority to conduct discovery for the limited purpose of identifying third party assets. The government believes that the Court should incorporate the same exception into any order continuing the discovery stay.

1 of discovery in the instant case, through December 31, 2009,
2 because such a stay would: (1) protect the public's interest in
3 the integrity of the criminal prosecutions; (2) conserve the
4 resources of the Court and the parties; (3) not harm the parties'
5 interests; and (4) avoid substantial inconvenience to witnesses.

6 **II. STATEMENT OF FACTS**

7 **A. Lehman's Second Amended Complaint**

8 Lehman's Second Amended Complaint, filed August 1, 2003,
9 charged multiple mortgage and real estate brokers, straw buyers,
10 straw borrowers, escrow companies, notaries, and property
11 management firms with several causes of action, including breach
12 of contract, breach of an implied covenant of good faith and fair
13 dealing, money had and received, money lent, intentional
14 misrepresentation, constructive fraud, breach of fiduciary duty,
15 negligent misrepresentation, negligence, violation of Government
16 Code § 8214.2, unjust enrichment, and violation of 18 U.S.C.
17 § 1964, the Racketeer Influenced and Corrupt Organizations Act.
18 (CR 211).

19 Lehman's causes of action arose from a three-year scheme in
20 which the defendants allegedly submitted false information to
21 obtain fraudulently inflated loans for the purchase of
22 residential real estate. According to the Second Amended
23 Complaint, Beverly Hills Estates Funding, Inc. ("BHEF") was the
24 mortgage loan broker that submitted the fraudulent loan
25 applications. The false information in those applications
26 included false appraisals, false loan applications, false HUD-1
27 closing statements, false credit reports, and false verifications
28 of rent. Based on misrepresentations of the creditworthiness of

1 the straw borrowers and the value of the properties used to
2 secure the loans, the defendants obtained loans which exceeded
3 the true values of the properties, thus creating a significant
4 risk of loss upon the borrower's default. (CR 211).

5 Lehman alleged that it had directly funded or acquired 84
6 mortgage loans which were based on the alleged fraud and breach
7 of contract. (CR 211).

8 **B. RBC's Second Amended Complaint**

9 On September 18, 2003, RBC's motion to intervene in Lehman's
10 action was granted. (CR 350). On November 3, 2006, RBC filed
11 its Second Amended Complaint of Intervenor. RBC's claims arose
12 out of the same alleged fraud scheme. RBC alleged that it had
13 closed, funded, and sold 40 loans based on the fraudulent
14 applications. (CR 1228).

15 **C. Status Of The Instant Case**

16 On May 8, 2003, a permanent receiver was appointed in the
17 instant case and a stay of discovery was issued. (CR 38). By
18 stipulation, on November 14, 2006, the Court lifted any remaining
19 stay on discovery in any other matters in which the receiver was
20 a party. By order entered on January 24, 2007, and on the
21 government's motion, the Court stayed discovery. (CR 1260).³
22 Although the Court's written order does not specify when the stay
23 shall expire, the Court stated at the hearing on the government's
24 motion that it would expire on December 28, 2008. (Matz Decl.
25 ¶ 3).

26
27 ³ A copy of the Court's January 24, 2007 order is
28 attached as Exhibit A to the Declaration of Jeremy D. Matz,
filed with this ex parte application.

1 **D. The Criminal Prosecutions**

2 Eleven individuals have been criminally charged in
3 connection with the mortgage fraud scheme, in various criminal
4 cases. Eight of them have pleaded guilty. Trial of the three
5 remaining defendants (Joseph Aram Babajian, Kyle John Grasso, and
6 Lila Rizk) is scheduled for June 9, 2009, in United States v.
7 Babajian, et al., CR 07-755-DDP. That case involves dozens of
8 witnesses and thousands of documents concerning the same real
9 estate transactions that form the basis for Lehman's and RBC's
10 complaints. Discovery has been produced to the remaining
11 criminal defendants in accordance with the Federal Rules of
12 Criminal Procedure and applicable federal constitutional and
13 statutory law. (Matz Decl. ¶ 2).

14 **E. Position Of The Civil Parties Regarding A Further Stay**

15 In the instant case, the Receiver, Lehman, RBC, Prudential,
16 and Cal Title have informed the government that they do not
17 oppose a continued stay of discovery. The government also caused
18 this ex parte application and the accompanying proposed order to
19 be distributed to all parties on the service list in this case.
20 The government asked any parties who oppose the relief sought
21 herein to notify the government of such opposition no later than
22 January 7, 2009. By the close of business on January 7, 2009, no
23 parties had notified the government of any opposition to the
24 relief sought herein. (Matz Decl. ¶¶ 4-5).

25 **III. ARGUMENT: A CONTINUED STAY OF DISCOVERY IS IN THE INTERESTS**
26 **OF JUSTICE**

27 The Court has the discretion to stay a civil action if the
28 Court determines that "the interests of justice seem to require

1 such action." Keating v. Office of Thrift Supervision, 45 F.3d
2 322, 324 (9th Cir. 1995) (quotation omitted). The following
3 factors should be considered in evaluating such a request:
4 (1) the interests of the public in the civil and criminal
5 matters; (2) the Court's interests in case management and
6 conservation of judicial resources; (3) the civil plaintiff's and
7 defendant's interests; and (4) the interests of non-parties. See
8 Keating, 45 F.3d at 325; Federal Savings and Loan Insurance Corp.
9 v. Molinaro, 889 F.2d 899, 902 (9th Cir. 1989). These factors
10 support continuing the discovery stay in this case.

11 **A. The Public's Interest In The Integrity Of The Criminal**
12 **Investigation**

13 The public -- and the government -- unquestionably have a
14 significant interest in a stay of the civil case so that the
15 government may continue to prosecute criminal conduct. The
16 integrity of the criminal prosecutions will be compromised if
17 existing or potential criminal defendants have access to and can
18 conduct discovery in the civil case for use in any future
19 criminal trial. The existing criminal defendants have received
20 full discovery in the criminal cases in compliance with the
21 Federal Rules of Criminal Procedure and federal constitutional
22 and statutory law. (Matz Decl. ¶ 2). However, if the stay of
23 discovery in this case is not continued, existing and potential
24 criminal defendants could attempt to obtain information from
25 witnesses in depositions or through other discovery in this case
26 that they would not be entitled to receive under the rules of
27 discovery in criminal cases. (Matz Decl. ¶ 6). See, e.g.,
28 Campbell v. Eastland, 307 F.2d 478, 487 (5th Cir. 1962)

1 (reversing discovery sanction based upon IRS district director's
2 refusal to produce civil discovery that would implicate criminal
3 case; a criminal defendant "should not be allowed to make use of
4 the liberal discovery procedures applicable to a civil suit as a
5 dodge to avoid the restrictions on criminal discovery and thereby
6 obtain documents he would not otherwise be entitled to for use in
7 his criminal suit").

8 **B. The Resources Of The Court And The Parties**

9 Permitting the parties in this civil case to immediately
10 conduct discovery and proceed to trial may result in a major
11 waste of this Court's resources. Witnesses are likely to assert
12 their Fifth Amendment privilege and decline to testify in
13 depositions in the civil case until the criminal prosecutions are
14 concluded. (Matz Decl. ¶ 6). Should this civil case proceed to
15 trial, they may continue to refuse to testify, which will prevent
16 a full airing of the disputed factual issues in the case.

17 Moreover, any convictions secured by the government based on
18 conduct relating to the Lehman / RBC case likely will resolve
19 some, if not many, aspects of this civil litigation. A criminal
20 conviction may have preclusive effect in this civil case. See,
21 e.g., Matter of Raiford, 695 F.2d 521, 523 (11th Cir. 1983)
22 (conviction in criminal case is conclusive as to issues arising
23 in a subsequent civil action); United States v. Mellon Bank,
24 N.A., 545 F.2d 869, 872-73 (3rd Cir. 1976) (resolution of a
25 parallel criminal case might "moot, clarify, or otherwise affect
26 various contentions in the civil case").

27 Finally, the additional stay requested is not unduly long.
28 Trial of the remaining criminal defendants is scheduled to begin

1 on June 9, 2009. Barring any further continuances of that date,
2 the government expects that this trial and related sentencing
3 proceedings can be concluded by the end of 2009. Assuming that
4 occurs, the stay requested herein can be lifted at that time and
5 discovery and further proceedings can commence again in the
6 instant case.

7 **C. The Interests Of The Parties**

8 The Receiver, Lehman, RBC, Prudential, and Cal Title have
9 informed the government that they do not oppose a continued stay
10 of discovery. Furthermore, by the close of business on January
11 7, 2009, no parties had notified the government of any opposition
12 to a continued stay of discovery. (Matz Decl. ¶¶ 4-5).

13 **D. The Interests Of Witnesses**

14 A stay would avoid substantial inconvenience to witnesses.
15 According to Lehman's and RBC's complaints, the conduct
16 underlying the civil matter involves several complex transactions
17 occurring over an approximately three-year period. There is a
18 substantial amount of documents involved, and dozens of
19 witnesses. If the civil and criminal matters proceed at the same
20 time, these witnesses likely will be interviewed, deposed, and/or
21 called to testify on numerous occasions by Lehman, RBC, the civil
22 defendants, and the government. If the civil matter is stayed,
23 the burden and inconvenience on these witnesses will be
24 substantially reduced.

25 **IV. CONCLUSION**

26 For the foregoing reasons, the government respectfully
27 requests that the Court stay discovery in the instant case
28 through December 31, 2009, so that the government can continue to

1 prosecute the related criminal cases.

DECLARATION OF JEREMY D. MATZ

I, Jeremy D. Matz, hereby declare as follows:

1. I am an Assistant United States Attorney ("AUSA") in the Central District of California. Together with AUSA Michael R. Wilner, I represent the United States in United States v. Joseph Aram Babajian, et al., CR 07-755-DDP ("U.S. v. Babajian"), as well as in the criminal cases related to that case.

2. U.S. v. Babajian and the related criminal cases concern many of the same transactions, entities, and individuals that are the subject matter of Lehman Brothers Bank, FSB, v. Beverly Hills Estates Funding, Inc., et al., CV 03-2702-DDP(JWJx) ("Lehman v. BHEF"). U.S. v. Babajian involves dozens of witnesses and thousands of documents. Discovery has been produced to the remaining criminal defendants in accordance with the Federal Rules of Criminal Procedure and applicable federal constitutional and statutory law. In U.S. v. Babajian, trial of the remaining defendants is scheduled to begin on June 9, 2009. Barring any further continuances of that date, the government expects that the trial and related sentencing proceedings can be concluded by the end of 2009.

3. By order entered on January 24, 2007, the Court granted the government's motion to stay discovery in Lehman v. BHEF, because of the criminal cases. The order is attached as Exhibit A to this Declaration. I have been informed by counsel for defendant Prudential California Realty ("Prudential") that, at the hearing on the government's motion, the Court stated that the stay would expire on December 28, 2008.

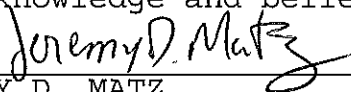
1 4. In Lehman v. BHEF, I have been informed by counsel that
2 the Receiver, Lehman, RBC Mortgage Company of California ("RBC"),
3 Prudential, and California Title Company ("Cal Title") do not
4 oppose a continued stay of discovery through December 31, 2009.

5 5. On December 24, 2008, I asked counsel for the Receiver
6 to forward this Declaration and the accompanying ex parte
7 application and proposed order to all parties on the service list
8 in Lehman v. BHEF. I also asked counsel for the Receiver to
9 inform any parties who oppose a continued stay of discovery
10 through December 31, 2009, that they should notify the government
11 of such opposition no later than January 7, 2009. By the close
12 of business on January 7, 2009, no parties had notified the
13 government of any opposition to a continued stay of discovery
14 through December 31, 2009.

15 6. If the stay of discovery in this case is not continued
16 through December 31, 2009, existing and potential criminal
17 defendants could attempt to obtain information from witnesses in
18 depositions or through other discovery in this case that they
19 would not be entitled to receive under the rules of discovery in
20 criminal cases. Furthermore, based on my assessment of the
21 criminal and civil cases, there are at least several witnesses
22 who would be likely to assert their Fifth Amendment privilege and
23 decline to testify in depositions in this civil case until the
24 criminal prosecutions are concluded.

25 I certify under penalty of perjury that the foregoing is
26 true and correct to the best of my knowledge and belief.

27 Dated: January 8, 2009



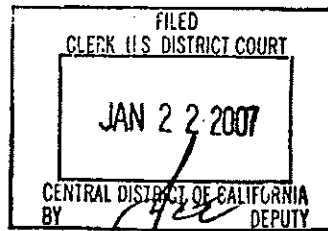
JEREMY D. MATZ
Assistant United States Attorney

J. Mather

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

S

LEHMAN BROTHERS BANK, FSB,
Plaintiff,

v.

BEVERLY HILLS ESTATES
FUNDING, INC., a California
corporation; BEVERLY HILLS
ESTATES FUNDING, INC. dba
ESTATES FUNDING; BEVERLY
HILLS ESTATES FUNDING, INC.
dba ON-TIME ESCROW; MARK
ABRAMS; MATTHEW TODD
COMPTON; PACIFIC REALTY, an
unknown business entity;
CHARLES JANSEN; ERICA
BASTIAANS; DESERT PACIFIC
FINANCIAL, INC., a
California corporation;
DESERT PACIFIC FINANCIAL,
INC. dba PLATINUM ESCROW;
DESERT PACIFIC FINANCIAL,
INC. dba MAJESTIC REALTY;
JUDITH REBASZ BLANCHARD;
TIMOTHY HOLLAND; PTD
PARTNERS, LLC, a limited
liability company; PTD
PARTNERS, LLC dba
S.F. ESTATES PROPERTY
MANAGEMENT; PTD PARTNERS,
LLC dba S.D. ESTATES
PROPERTY MANAGEMENT; PTD
PARTNERS, LLC dba WESTSIDE
PROPERTY MANAGEMENT; PTD
PARTNERS, LLC dba WLA
MANAGEMENT GROUP; PTD
PARTNERS, LLC dba ESTATES
PROPERTY MANAGEMENT,
PICKFORD REALTY, LTD.,

Defendants.

Case No. CV 03-02702 DDP (ANx)

ORDER GRANTING GOVERNMENT'S
MOTION TO INTERVENE FOR LIMITED
PURPOSE OF STAYING DISCOVERY;
ORDER STAYING DISCOVERY

[Motion filed on December 26,
2006]

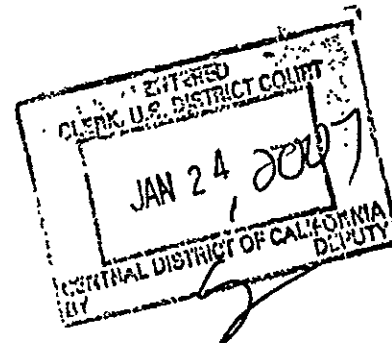


EXHIBIT A/260

1 This matter is before the Court on the government's motion to
2 intervene for the limited purpose of staying discovery and to stay
3 discovery. After reviewing the papers submitted by the parties,
4 the Court grants the motion.

5
6 **I. BACKGROUND**

7 On April 17, 2003, Plaintiff Lehman Brothers Bank ("Lehman")
8 commenced suit, alleging a massive real estate fraud scheme
9 perpetuated by several entities, including Defendant Pickford
10 Realty, dba Prudential California Realty, Inc. ("Prudential"), and
11 Defendant California Title Company ("CalTitle"). On September 18,
12 2003, RBC Mortgage Company's ("RBC") motion to intervene in the
13 Lehman action was granted. RBC's and Lehman's complaints arise out
14 of the same alleged fraud scheme.

15 On May 8, 2003, a permanent receiver was appointed in the case
16 and a stay of discovery was issued. By stipulation, on November
17 14, 2006, this Court lifted any remaining stay on discovery in any
18 other matters in which the receiver was a party.

19 The government is currently conducting a criminal
20 investigation of the same conduct that is the focus of Lehman
21 Brothers' and RBC's complaints. (McNally Decl. ¶ 3.) The
22 government's investigation involves dozens of witnesses and
23 thousands of documents concerning the same real estate transactions
24 which form the basis for the parties' complaints. (*Id.*) Certain
25 individuals have already been charged with criminal conduct.
26 However, the government's ongoing criminal investigation involves
27 other individuals not yet charged, as well as additional conduct
28 not already charged in the cases listed above. (*Id.*) Moreover,

1 the ongoing investigation involves matters occurring before the
2 Grand Jury.¹ (Id.)

3 On December 26, 2006, the government filed this motion to
4 intervene for the limited purpose of staying discovery and to stay
5 discovery. The government has spoken with counsel for Lehman, RBC,
6 the Receiver, and CalTitle, all of whom indicate that they do not
7 oppose the government's motion.² (Id. ¶¶ 7-11.) Defendants Kyle
8 Grasso and Joseph Babajian also submitted a statement of non-
9 opposition to the motion. Prudential initially opposed the stay on
10 the grounds that it wishes to conduct depositions under Federal
11 Rule of Civil Procedure 30(b)(6) to permit the resolution of a
12 motion for summary judgment. (Id. ¶ 9.) Prudential's position
13 prompted a Response from RBC opposing any order by this Court that
14 would permit Prudential to obtain discovery yet exclude other
15 parties from doing so. (RBC Resp.) However, on January 8, 2006,
16 Prudential submitted a response stating that, upon further
17 consideration of the government's motion, it does not oppose the
18 stay of discovery sought by the government.³ (Prudential Resp. at
19 2.) Thus, it now appears that all parties are unopposed to the
20 government's motion.

21
22 ¹ The government notes that Federal Rule of Criminal
23 Procedure 6(e) prohibits disclosure of the details of its
investigation. (McNally Decl. ¶ 3.)

24 ² CalTitle does not oppose a global stay of discovery, but
25 would prefer the opportunity to conduct depositions under Fed. R.
Civ. P. 30(b)(6). (McNally Decl. ¶ 11.)

26 ³ Prudential also indicated that it does not waive its right
27 to later seek relief from the stay of discovery for purposes of
28 securing evidence to support a motion for summary judgment against
the remaining claims filed by RBC or the Receiver. (Prudential
Resp. at 2.) The Court will address this issue only if and when it
arises.

1 II. DISCUSSION

2 A. Intervention as of Right

3 1. Legal Standard

4 "Upon timely application," Rule 24(a) of the Federal Rules of
5 Civil Procedure allows any person to intervene in an action "when
6 the applicant claims an interest relating to the property or
7 transaction which is the subject of the action and the applicant is
8 so situated that the disposition of the action may as a practical
9 matter impair or impede the applicant's ability to protect that
10 interest, unless the applicant's interest is adequately represented
11 by existing parties." Fed. R. Civ. P. 24(a)(2).

12 In the Ninth Circuit,

13 [a]n order granting intervention as of right is
14 appropriate if (1) the applicant's motion is timely; (2)
15 the applicant has asserted an interest relating to the
16 property or transaction which is the subject of the
17 action; (3) the applicant is so situated that without
18 intervention the disposition may, as a practical matter,
19 impair or impede its ability to protect that interest;
20 and (4) the applicant's interest is not adequately
21 represented by the existing parties.

22 Portland Audubon Soc'y v. Hodel, 866 F.2d 302, 308 (9th Cir. 1989),
23 quoting County of Orange v. Air Cal., 799 F.2d 535, 537 (9th Cir.
24 1986). Thus, in order to show that it has a right to intervene in
25 this action, the government must show that it meets all four of the
26 above requirements (i.e., timeliness, interest, inability to
27 protect interest, and inadequate representation).

28 ///

1 2. Analysis

2 a. Timeliness

3 Discovery was stayed by prior court order from May 8, 2003,
4 through November 14, 2006. The government's motion was filed on
5 December 26, 2006 - approximately five weeks after the stay was
6 lifted, and three days before a deposition in the case was
7 scheduled to occur. Therefore, the Court finds that the motion is
8 timely.

9 b. Government's Interest

10 The Ninth Circuit has stated that an applicant has a
11 "significant protectable interest" in an action if "(1) it asserts
12 an interest that is protected under some law, and (2) there is a
13 'relationship' between its legally protected interest and the
14 plaintiff's claims." Id. This test is broadly construed in favor
15 of allowing intervention. Sierra Club v. U.S. Env'tl. Prot. Agency,
16 995 F.2d 1478, 1481 (9th Cir. 1993). Here, the government has an
17 important interest in preserving the sanctity of its ongoing
18 criminal investigation. This interest is widely recognized as one
19 that it is significantly protectable. See, e.g., SEC v. Chestman,
20 861 F.2d 49, 50 (2nd Cir. 1988); SEC v. Downe, 1993 WL 22126
21 (S.D.N.Y. 1993). Moreover, as the questions and facts involved in
22 both the civil and criminal cases are extremely similar, a
23 relationship between the government's interest and the plaintiff's
24 claims exists. Accordingly, the Court finds that the government
25 has a significant, protectable interest in intervening for the
26 purposes of seeking a stay on discovery.

27 ///

28 ///

c. Inability to Protect Interest and Inadequate Representation

The government's ability to investigate criminal conduct may be diminished if witnesses are compelled to give testimony in the civil case or if potential criminal defendants obtain access to evidence through the use of civil discovery in order to formulate a defense in the criminal case. Moreover, there is no way to ensure that the government's interests in preserving the integrity of its investigation will be protected without intervention. Thus, these two factors are also satisfied.

3. Conclusion

For the foregoing reasons, the Court grants the government's unopposed motion to intervene.

B. Stay

1. Legal Standard

A court has the inherent power to stay proceedings. Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). This power to stay is "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Id. When reviewing a motion to stay in light of a parallel criminal proceeding, the Court considers: (1) the interests of the public in civil and criminal matters; (2) the Court's interest in case management and conservation of judicial resources; (3) the civil plaintiff and defendant's interests; and (4) the interests of non-parties. See Keating v. Office of Thrift Supervision, 45 F.3d 322, 325 (9th Cir. 1995).

///

1 2. Analysis

2 a. Public Interest

3 As noted above, the public has an interest in ensuring that
4 the integrity of a criminal investigation and any subsequent
5 criminal prosecution is not compromised by discovery proceedings in
6 a parallel civil case. Accordingly, the Court finds that this
7 factor weighs in favor of staying discovery.

8 b. Judicial Resources

9 Until the criminal investigation is resolved, witnesses
10 involved in that investigation are likely to assert their Fifth
11 Amendment privilege and decline to testify in depositions.
12 Moreover, any convictions are likely to affect several aspects of
13 the civil case, and may possibly moot some issues. Thus, the Court
14 finds a stay would conserve its resources, as well as those of the
15 parties.

16 c. Parties' Interests

17 The non-moving parties have indicated that they are not
18 opposed to the government's motion. This factor thus weighs in
19 favor of granting the stay.

20 d. Non-parties' Interests

21 Finally, a stay would avoid inconvenience to the many
22 witnesses, who would be burdened if the matters proceeded at the
23 same time.

24 ///

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27 ///

28 ///

1 3. Conclusion


2 For the foregoing reasons, the Court stays discovery pending
3 the criminal investigation and any subsequent prosecutions.

4
5 **III. CONCLUSION**

6 For the foregoing reasons, the Court grants the motion and
7 issues a stay on discovery. The Court notes that the Receiver will
8 have the continued authority to conduct discovery for the limited
9 purpose of identifying third party assets.

10
11
12 IT IS SO ORDERED.

13
14
15 Dated: 1-22-07


DEAN D. PREGERSON
United States District Judge